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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 97-11
Implementation of Section 402(b)(2)(A)	)	
of the Telecommunications Act of 1996	)	

REPLY COMMENTS OF AMERITECH

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SUMMARY

The Commission says that in this proceeding, it will "seek to give effect to the de-regulatory letter and spirit of the 1996 Act in general, and Section 402(b)(2)(A) specifically, thereby promoting competition by removing outdated barriers to entry in telecommunications markets." NPRM at par. 9. To achieve this goal, the Commission should broadly construe the exemption contained in Section 402(b)(2)(A) to apply to any extension of a carrier's existing network whether or not that extension expands the carrier's network into new geographic territory. If any portion of Section 214 remains enforceable, then it would be reasonable for the Commission simply to forbear from enforcing it with respect to price cap carriers. And just as competing carrier generally should be subject to the same regulatory obligations, that general rule should apply with respect to the procedures under Section 214 to discontinue or reduce service. If the Commission takes there three steps, it will help bring Section 214 in line with the "pro-competitive, de-regulatory national policy" underlying TA96.

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REPLY COMMENTS OF AMERITECH

The Ameritech Operating Companies[1] ("Ameritech") respectfully offer the following reply to the three main issues addressed in the Initial Comments on the Notice of Proposed Rulemaking released in the above captioned docket on January 13, 1997 ("NPRM"). With respect to the other issues raised in the NPRM, Ameritech will rely on its Initial Comments.

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[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

I.

THE EXEMPTION IN SECTION 402(b)(2)(A) COVERS ANY EXPANSION OF A CARRIER'S EXISTING NETWORK, INCLUDING THE CONSTRUCTION OF "NEW" LINES.

No party argued in their Initial Comments that Section 214 continues to apply to the "extension of any line." This is not surprising because such an argument would be unreasonable on its face. The plain language of Section 402(b)(2)(A) expressly exempts common carriers from the requirements of Section 214 "for the extension of any line ... ."

The main point made in this section of the Initial Comments concerned how the Commission should interpret the phrase "extension of any line." Ameritech argued[2] that this phrase should be interpreted as including any extension of a carrier's existing network whether or not that extension expands the carrier's network into new geographic territory. The phrase "extension of any line" should include the construction of a "new" line. And it should include projects which increase the capabilities of a carrier's existing network, assuming those projects are not regarded as "improvements" which already are beyond the scope of Section 214.[3]

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[2] Ameritech Initial Comments at 6-12.

[3] Construing Section 214 in this manner would be consistent with how the Surface Transportation Board has interpreted the parallel section of the Interstate Commerce Act. *See* Ameritech at 11-12. And as BellSouth correctly observes, it also would be consistent with

Ameritech argued that this interpretation is consistent with the dictionary meaning of the words "extension" and "new," legislative intent, and Commission and court interpretations of Section 214.

Several parties agreed.[4] These parties offered a variety of other reasons why the Commission should interpret the phrase "extension of any line" to include any expansion of a carrier's existing network. For example, some note that the words "extensions" and "new lines" in Section 214 must refer to the same thing because Section 214 is entitled with the singular phrase "[e]xtension of lines."[5] Others point to the Commission's acknowledgment that no distinction between "extensions" and "new" lines has been drawn in the past by the Commission or the courts.[6] Still others point to the anomalous results that would be produced by such a distinction, to-wit: no permission is needed for a carrier to "extend" a line into new territory, but once the carrier's network is thus extended, the

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the Execunet I decision. BellSouth at 5-6, *citing* MCI Telecommunications Corp. v. F.C.C., 561 F.2d 365, 375 (D.C. Cir. 1977).

[4] *See e.g.* USTA at 2; Pacific Telesis at 5-6; Southwestern Bell at 2; BellSouth at 4-7; Bell Atlantic and NYNEX at 2-3; GTE at 2-5.

[5] Bell Atlantic and NYNEX at 2.

[6] BellSouth at 4.

Commission must grant prior approval of the construction of any "new" lines in that territory.[7] All of these arguments are valid.

But there is a more basic reason why the Commission should interpret the phrase "extension of any line" to include any expansion of a carrier's existing network, including the construction of "new" lines. That is the interpretation most consistent with the "pro-competitive, de-regulatory national policy" which underlies TA96. In fact, it is not at all clear why -- in the face of this "pro-competitive, de-regulatory national policy" -- the Commission at this time would want to distinguish between "extensions" and "new" lines for purposes of implementing the statutory exemption in Section 402(b)(2)(A) when it has not recognized any such distinction in the past when implementing the statutory requirements of Section 214. If the Commission truly wants to further a "pro-competitive, de-regulatory national policy" in this docket, the Commission should not narrowly interpret the phrase "extension of any line" contained in Section 402(b)(2)(A). Instead, the Commission should interpret that phrase as applying to any extension of a carrier's existing network. If it does so, the Commission will not have to rely on its forbearance authority to relieve

[7] GTE at 4-5.

carriers of the archaic regulatory burdens associated with the traditional application of Section 214 regulatory requirements.

II.

IF ANY PORTION OF SECTION 214 REMAINS ENFORCEABLE NOTWITHSTANDING THE EXEMPTION CONTAINED IN SECTION 402(b)(2)(A), THEN THE COMMISSION SHOULD FORBEAR FROM ENFORCING IT WITH RESPECT TO PRICE CAP CARRIERS.

Ameritech said in its Initial Comments that if the Commission decides to limit "extensions" in the manner proposed in the NPRM, then -- pursuant to new Section 10 of the Communications Act[8] -- the Commission should forbear from exercising its Section 214 authority with respect to "new" lines, at least for price cap carriers.[9] Such forbearance meets each of the three criteria of Section 10(a) and will promote competitive market conditions and enhance competition among providers of telecommunications services as envisioned by Section 10(b). Again, several other parties agreed.[10]

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[8] 47 U.S.C. Section 160; Section 401 of TA96.

[9] And for the reasons set forth in the NPRM, the same treatment should be accorded to average schedule companies, as well as non-dominant domestic carriers whether they are offering local or long distance services.

[10] *See e.g.* Pacific Telesis at 7; Southwestern Bell at 3; BellSouth at 7; Bell Atlantic and NYNEX at 3; and GTE at 6.

MCI is really the only party filing Initial Comments who opposes this forbearance from Section 214 regulation. MCI's main argument against forbearance is not so much that Section 214 is needed "to prevent useless duplication of facilities that could result in increased rates being imposed on captive telephone ratepayers."[11] Rather, MCI argues that Section 214 regulation is needed to ensure that carriers "will not be able to undertake anticompetitive investments in facilities that are inefficient and discriminatory."[12] According to MCI, the Commission should use Section 214 regulation to authorize only "legitimate expansion plans."[13] MCI says that the Section 214 authorization proceeding could be used to ensure that a dominant carrier does not undertake:

> investments that foreclose entry by investing in excess capacity; that discriminate in favor of an affiliate or subsidiary; that are designed in such a way as to lower the quality of service obtained by interconnecting carriers relative to their own; or that are made with the intent of offering services under discriminatory terms and conditions.[14]

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[11] *See* NPRM at par. 1 *citing* 78 Cong. Rec. 10314 (1934)(Remarks of Rep. Rayburn) for the legislative history of Section 214.

[12] MCI at i; 5. Nowhere does MCI explain how this could have been the legislative intent behind Section 214 given that Section 214 was enacted prior to the emergence of competition in the telecommunications marketplace.

[13] *Id.* at 14.

[14] *Id.* at 14-15.

MCI says that Section 214 is the best vehicle for this type of exhaustive examination "[b]ecause Section 214 review occurs prior to service provision ... ."[15] Thus, MCI's basic argument is that Section 214 should be used as a pre-construction building permit process that slows down a competitor's ability to introduce new products and services in a timely manner, with the pretext being that this process is need to ensure against anticompetitive and discriminatory practices.

The Commission expressly rejected this argument when it tentatively concluded that:

> the imposition of Section 214 authorization requirements on price cap, average schedule, and domestic non-dominant carriers is not necessary to prevent those carriers from engaging in anticompetitive or discriminatory practices. The Section 214 certification process is not designed to prevent such abusive practices and, furthermore, the Commission has in place rules specifically addressing anticompetitive and discriminatory practices.[16]

In fact, it is the enforcement of, not the forbearance from, Section 214 authority that can have anticompetitive effects because, as the Commission notes,

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[15] *Id.* at 4 (emphasis added).

[16] NPRM at par. 45.

> carriers proposing projects that do not fall within one of the Commission's blanket [Section 214] authority rules must engage in a potentially lengthy Commission review of their proposals and disclose potentially competitively sensitive information to rivals. By reducing the regulatory burden imposed by Section 214, we [the Commission] would encourage the development of competition by facilitating market-driven network expansion and reducing the cost of obtaining regulatory approval.[17]

This, in turn, "should promote the ability of carriers to satisfy consumer demands more efficiently and at lower rates.[18]

MCI's approach goes in exactly the opposite direction. Whereas the Commission focuses on satisfying customer demand, MCI focuses on satisfying regulatory requirements. The Commission would have investment is driven by the market; MCI would have investment driven by regulation. The Commission's proposal results in more efficiency; MCI's proposal results in less efficiency. The Commission would reduce the costs of regulatory compliance; MCI would increase those costs. The Commission should reject MCI's approach to Section 214 enforcement.

[17] NPRM at par. 48.

[18] NPRM at par. 46.

If any portion of Section 214 remains enforceable notwithstanding the exemption contained in Section 402(b)(2)(A), then it would be reasonable for the Commission simply to forbear from enforcing it with respect to price cap carriers.

III.

COMPETING CARRIERS SHOULD BE SUBJECT TO THE SAME SECTION 214 REQUIREMENTS WITH RESPECT TO DISCONTINUANCE OF SERVICE.

The Commission recognizes that the exit barriers embodied in Section 214 could make carriers reluctant to enter a market and, therefore, the Commission proposes in the NPRM to extend its streamlined discontinuance procedures to domestic dominant carriers. However, the Commission also proposes that dominant domestic carriers should be required to give 60 days notice prior to any such discontinuance or reduction in service.[19]

Some of the parties offering initial comments argue that the Section 214 discontinuance procedures should be applied differently depending on the nature of the carrier. For example, AT&T says that Section 63.71 of the

[19] NPRM at pars. 70-71.

Commission's rules should be revised "to eliminate the presumption that proposed service discontinuances by incumbent local exchange carriers ("ILECs") will be granted by the Commission in the ordinary course."[20] MCI simply "opposes extending streamlined discontinuance procedures to dominant carriers."[21]

Ameritech continues to believe that competing carriers generally should be subject to the same regulatory obligations and this general rule should apply with respect to the procedures under Section 214 to discontinue or reduce service. Asymmetrical regulation creates competitive advantages for those carriers with lesser obligations. This kind of regulatory handicapping of only some providers skews the competitive marketplace and is contrary to the "pro-competitive, de-regulatory national policy" underlying TA96. Therefore, Ameritech agrees that the Commission's streamlined Section 214 process for discontinuance or reduction of service should be available to both dominant and non-dominant carriers. And, for the same reasons, the Commission should not

[20] AT&T at 1. With this argument, AT&T has come full circle. Having railed for years against "monopoly local exchange providers," AT&T now wants to erect disparate exit barriers because discontinuance of a particular ILEC service potentially may have an adverse affect on AT&T.

[21] MCI at 15. Naturally, MCI wants it both ways, with non-dominant carriers enjoying steamlined discontinuance procedures under 47 CFR Section 63.71 even though those steamlined discontinuance procedures are not also available to dominant carriers.

impose different notice requirements on dominant and non-dominant carriers which utilize that streamlined process.

IV.

CONCLUSION

Section 402(b)(2)(A) provides compelling justification for a complete reassessment of Section 214 regulations. Ameritech applauds the Commission for undertaking this reassessment in this docket, and encourages the Commission to follow through with the serious proposals made here for bringing Section 214 in line with the "pro-competitive, de-regulatory national policy" underlying TA96.

Respectfully submitted,

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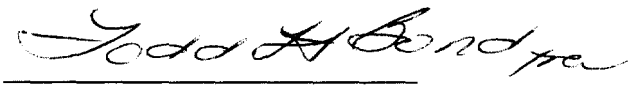
Dated: March 17, 1997

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 17th day of March, 1997.

By: 

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